United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

77- 2071

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JAN 19 1978

1-16-78

ANTONIA REYES,
Appellant,

-vs-

Civil No. 77 - 2071

UNITED STATE OF AMERICA,
Appellee.

APPEAL FROM THE ORDER DATED MAY 24th, 1977 of the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, IN CIVIL ACTION NUMBER 77-CIVIL 2477 (CLB).

66

UNITED STATES COURT OF APPEALS
FILED
MAR 1 1978
SECOND CIRCUIT

BRIEF OF APPELLANT

COUNSEL FOR APPELLANT:

Antonia Reyes

ANTONIA REYES, Pro Se
P.O. Box 1000
Lewisburg, Pennslyvania
17837

TABLE OF CONTENTS

Table of Citations ii

STATEMENT OF THE ISSUES 1

STATEMENT OF THE CASE 2

ISSUE I.

THE COURT ERRED IN DENYING APPELLANT'S § 2255 PETITION WITHOUT DETERMINING WHETHER OR NOT HE WAS DENIED A FAIR TRIAL BECAUSE OF A LANGUAGE BARRIER 1

C O N C L U S I O N 5

C E R T I F I C A T E O F S E R V I C E 6

TABLE OF CITATIONS

CASES: PAGE

Atilus vs. United States, 378 F. 2d. (5th Cir. 1967).. 4

Rizzo vs. United States, 516 F. 2d. (2d Cir. 1975).... 4

Torres vs. United States, 505 F. 2d. (5th Cir. 1974).. 4

STATUTES:

28 U.S.C. § 2255 . . . . . 1, 2, 3,

F.R.C.P.

Rule 35 2,

Rule 11 4,

STATEMENT OF ISSUES

1. DID NOT THE TRIAL COURT ERR IN DENYING APPELLANT'S § 2255 PETITION WITHOUT A HEARING WHERE HE ALLEGES THAT HIS TRIAL WAS CONSTITUTIONALLY INFIRM AND HE WAS DENIED HIS CONSTITUTIONAL RIGHTS TO A FAIR TRIAL?

STATEMENT OF THE CASE

On JUNE 6, 1975, appellant was sentenced by the District Court (Brient J. (U.S.D.J.)) of the Southern District of New York, Criminal Indictment No. 74 Cr. 382 (CLB) to serve twelve (12) years imprisonment (reduced on OCTOBER 28, 1975 to ten (10) years under F.R.C.P. Rule 35).

Upon exhausting all appeals, appellant filed a motion to vacate sentence and order a new trial pursuant to Title 28 U.S.C. Section 2255 on date of May 9, 1977, and on MAY 24th, 1977 was denied based primarily on the Court's contentions that appellant's motion was frivolous.

Appellant maintains that he was appointed counsel (Lawrence H. Levner, Esq.) by the Court, who failed to (1) Properly prepare a defense, (2) Research the charges, (3) Advise him of any defense option, (4) Subpoena witnesses on his behalf, (5) Prepare any trial briefs, (6) Refuse to permit him to testify on his own behalf, (7) Meaningfully converse with him as counsel had no knowledge of the Spanish language.

A R G U M E N T

This appeal is primarily based on facts that are reflected in appellee's trial notes of testimony. Even though his court appointed attorney made an attempt to afford him proper defense and representation, the trial Court operated on a frequency of mass production, failing to realize, regardless that the Court had other matters pending, that a human being was fighting for his life. The Court seemed only interested in rushing the proceedings regardless of guilt or innocence that would be left to a confuded jury to decide. By direct interference and impedance of the Court, defense counsel was prevented from assuring his client a fair trial. It seemed that the judicial Code of Ethics no longer existed and the case was expeditiously tried, resulting in a complete mockery of JUSTICE and the government satisfied with another statistical (fraudulent) conviction.

The Honorable Judge Charles L. Brient in denying appellant's 2255 motion on MAY 24, 1977 stated that:

> "The Court recalls petitioner's trial and conviction which was affirmed by the Court of Appelas. At all relevant times, petitioner had the benefit of a Spanish language interpreter. 1/ The proof of his guilt was overwhelming." etc.....
>
> "On May 6, 1975 petitioner and Mrs. Rodriques went to trial before a jury, each with seperate assigned counsel. Petitioner was at all times adequately represented by assigned counsel, who projected at all times a sincere belief in his innocence. At no time was there any claim made of failure of communication due to language barrier, 2/ nor any complaint about the effectiveness of counsel...."

1/ No where in the trial notes of testimony is it reflected that the Court assigned a Spanish speaking interpreter.

2/ On date of January 13, 1978, Mr. Jack M. Swisher, Education Dept., U.S. Government Memorandum, Lewisburg Federal Penitentiary, Lewisburg, Pennslyvania states that: See fn, next page. Cont.

The record, the facts and the law clearly defines appellant's conviction as Constitutionally infirm; that appellant was completely denied his Constitutional Rights under the 1st., 5th., and 6th., Amendments to the United States Constitution. See: ATILUS vs. UNITED STATES, 378 F. 2d.52 (5th Cir. 1967) relating language barrier to understanding the proceedings; See also: RIZZO vs. UNITED STATES, 516 F. 2d. 789 (2d Cir. 1975); TORRES vs. UNITED STATES, 505 F. 2d. 957 (5th Cir. 1974) where the Circuit Courts have held that Appellants could not understand the proceedings because of a language barrier even though the later cases involved violation of Rule 11 of F.R.C.P.

C O N C L U S I O N

It has been clearly established that appellant's fundamental Constitutional Rights to a fair trial etc., has been grossly violated and the facts and memorandum of Law support these allegations.

Therefore, it is respectfully requested that this Honorable Court remand to the District Court and to Order a new trial as the law and justice require.

Respectfully Submitted,

Antonio Reyes

ANTONIO REYES, Pro Se Appellant

P.O. Box 1000
Lewisburg, Pennslyvania. 17837

2/ (Cont.)
"Mr. Antonia Reyes, presently incarcerated at the Lewisburg Federal Penitentiary, Lewisburg, Pennslyvania, is enrolled in our basic Educational Program as an English as a Second Language Participant.

When arriving at Lewisburg in September 1975, Mr. Reyes was unable to take the Standard Achievment Test administered as part of his education orientation because of the language barrier. However, since his participation in school as an English as a Second Language enrollee, Mr. Reyes was most recently tested in December 1977 and scored at the 4th grade level in reading comprehension."

C E R T I F I C A T E O F S E R V I C E

C E R T I F I C A T E O F S E R V I C E

Appellant, Antonia Reyes, pro se litigant, does hereby certify that two (2) true and correct copies of this brief has been mailed to the Office of the United States Attorney (Appellees) on the same date this brief was mailed to the United States Court of Appeals for the Second Circuit.

Two copies to:

U.S. Attorney S.D.N.Y.
One St. Andrews Plaza
New York City, New York 10007

One original and three copies to:

Office of the Clerk
Ms. Sophia Korecka
U.S. Court of Appeals for the Second Circuit
United States Courthouse
Foley Square
New York 10007

Sent via First Class Mail:

Antonio Reyes

Antonio Reyes, Appellant
Pro Se